IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No. 641 of 2006.

Judgment reserved on 4.12.2007.

Date of decision December 14, 2007.

State of Himachal Pradesh **….Petitioner.**

Versus

Mool Chand Diwan **….Respondent.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1] *No.*

For the Petitioner	**Mr. M.A.Khan, Deputy Advocate General.**
For the Respondents:	**Mr. R.K.Bawa, Sr. Advocate, with Mr. Inderjit Singh, Advocate.**

Dev Darshan Sud, J.

This writ petition has been filed by the State of Himachal Pradesh through the Collector, District Kangra at Dharamsala challenging the order of the Financial Commissioner, dated 25.6.2005 declining permission to the petitioner to review the order of the Collector dated 29.12.1988.

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[1] ***Whether reports of Local Papers may be allowed to see the judgment? Yes.***

The Settlement Collector, Kangra at Dharamsala in case No. 8/88/SO decided on 29.12.1988 allowed the application of the respondent for correction of revenue record. It was alleged by the respondent that during the settlement in 1988, land comprised in Khasra Nos. 1866, 1867 and 1878 kitas 3 measuring 2063-03 square meters has been entered as *shamlat* which was contrary to the position as existing on the spot. It was further alleged that this land was in fact in the ownership of the respondent having been allotted to him. The Collector sent the entire file for inquiry to the Tehsildar, Dharamsala for verification on the spot and a detailed report of the factual situation. This was ordered pursuant to Rule 18.3 of the Himachal Pradesh Land Revenue Act (hereafter referred to as 'the Act').

The Naib Tehsildar submitted a detailed report stating that khasra Nos. 1866, 1867 and 1878/2, measuring 1359.15 square meters were in the cultivating possession of the respondent for a long time who had planted an orchard on this land. The Naib Tehsildar reported that there was a clear mistake in the current settlement and the possession

of these khasra numbers was that of the respondent. He recommended the case of the respondent as being correct. The Collector before passing the order of correction went through the report in detail and sent the file to the Naib Tehsildar, Peshi to ascertain from the Forest Department or any affected party if it was adversely affected in any manner in case correction was ordered. Despite repeated notices having been sent, the Forest Department did not respond nor did any other agency of the State object to the correction sought by the respondent. In the circumstances, the application was allowed. After a lapse of more than 14 years, the Collector sought permission of the Financial Commissioner for revising this order pursuant to Section 17 of the Act alleging therein that the entry *Bagicha Barani Faldar* as recorded was not correct. A vague allegation was made that the respondent had fraudulently got the revenue entries changed without in any manner specifying the nature or particulars of fraud etc. A plea was also made for condonation of delay in instituting the revision petition.

The Financial Commissioner, on a detailed consideration of the facts, held that the pleas

raised were extremely vague and there was no evidence to substantiate the allegations made against the respondent. Since the case was an old one, records had also been destroyed by the petitioner, i.e. the Collector, Kangra District at Dharamsala. He was not satisfied about the delay in filing the petition for revision. The permission to review was accordingly rejected.

I have heard the learned counsel for the parties and have gone through the record.

Section 17 of the Act may be noticed which reads thus:

> **"Power to call for, examine and revise proceedings of Revenue Officers.-**
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> **(1) The financial Commissioner may at any time call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him.**
>
> **(2) A Commissioner or Collector may call for the record of any case pending before, or disposed of by, any Revenue Officer under his control.**
>
> **(3) If in any case in which a Collector has called for a record and he is of the opinion that the proceedings**

taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Commissioner whose decision shall be final.

(4) The Financial Commissioner or Commissioner may in any case called for by himself under sub-section (1) or under sub-section (2), as the case may be, pass such orders as he thinks fit:

Provided that he shall not under this section pass an order reversing or modifying any proceedings or order of subordinate Revenue Officer and affecting any question of right between private persons without giving those persons an opportunity of being heard:-

Provided further that the cases reported to the Financial Commissioner under sub-section (3) as it existed prior to the commencement of the Himachal Pradesh Land Revenue (Amendment) Act, 2000, shall be decided by him as heretofore."

The powers of the Financial Commissioner are inter alia (a) to call for the record of any case pending before or disposed of by any revenue officer subordinate to him, contained in sub section (i) of Section 17. Learned Deputy Advocate General appearing for the State has submitted that this power can be exercised any time by the Financial Commissioner and is not subject to any restraint of limitation or any other fetter of any kind. He submits that the interest of the State requires that the Financial Commissioner exercises his power without any restriction. This proposition put forth by the learned counsel for the State cannot be accepted.

In Kashmir Singh (deceased) through his L.Rs. Chain Singh and others v. State of Himachal Pradesh and others CWP 235 of 1992, decided on 3rd September, 2001; this Court was dealing with the provisions of Himachal Pradesh Ceiling on Land Holdings Act, 1972 and more specifically the revisional jurisdiction vested in the Financial Commissioner under Section 20. The section provides:

> **" Appeal, review and revision – (1) Any person aggrieved by any decision or order of the Collector may within sixty days from the date of the**

decision or order prefer an appeal to the Commissioner:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by an order of the Commissioner made under sub-section (1) may, within ninety days from the date to the order, file a revision petition before the Financial Commissioner so as to challenge the legality or propriety of such order and the Financial Commissioner may pass such order as he may deem fit. The order of the Financial Commissioner shall be final.

(3) Notwithstanding anything contained in the foregoing sub-section, the Financial Commissioner may at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit."

In the totality of the circumstances, this Court held:

> **" Reading of the above Section makes it clear that a person aggrieved by any decision or order of the Collector may prefer an appeal to the Commissioner within sixty days from the date of decision. A person aggrieved by order of the Commissioner may file a revision petition before the Financial Commissioner within ninety days from the date of such order. Sub-section (3) of Section 20, no doubt, starts with a non – obstante clause and confers powers on the Financial Commissioner to call for " at any time" the records and proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order.**
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> **The question for our consideration, therefore, is whether such revisional power can be exercised "at any time". ……..**
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> **Moreover, when no period of limitation is prescribed, revisional powers are required to be exercised within reasonable time. A similar question arose before the Supreme Court in**

> ***State of Gujarat vs. Patel Raghav Natha and others,*** **AIR 1969 SC 1297. Considering a similar provision of Section 211 of the Bombay Land Revenue Code, 1879, in juxtaposition Section 65 of the Code, the Apex Court observed that the revisional power must be exercised within few months. It was indicated by the Supreme Court that the connotation "reasonable time" must be considered in the light of the relevant statute, nature of power to be exercised and the action to be taken keeping in mind the order passed by the authority. The said decision has been reiterated in several other cases by the Supreme Court and followed by the High Courts……."**

The decision of the Supreme Court in Loku Ram v. State of Haryana and others 1999 (3) PLR (Vol. 123) 590) lays down that the exercise of power has to be within a reasonable period. In this case the Supreme Court was considering the interpretation of Section 18(6) of the Haryana Ceiling on Land Holdings Act, 1972 which vested powers in the Financial Commissioner to exercise powers suo motu at any time. The Court observed:

"2. However, in 1989, an application was presented before the Financial Commissioner under Section 18(6) of the Act praying for invoking his suo motu powers to look into the legality of the orders after calling for the records of the Collector. The Financial Commissioner, after hearing both parties, passed an order on 17.2.1994 setting aside the order of the Collector on the basis that the same was vitiated by patent illegality. An objection was raised before the Financial Commissioner that he should not exercise the revisional power after a lapse of seven years from the date of the order of the Collector. He over ruled that objection holding that when an order was vitiated by illegality, he could look into the same under Section 18(6) of the Act. The Financial Commissioner disagreed with the Collector and set aside his order.

3. The order of the Financial Commissioner was challenged before the High Court in a writ petition but the High Court refused to interfere with the same. The present appeal before us is against that order of the High Court.

4. Section 18(6) of the Act reads thus:-

"Section 18(6) .- Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo motu at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit."

5. No doubt, the section uses the expression "at any time" but it cannot be indefinite. The power has to be exercised within a reasonable time. While construing the expression "at any time", this court in *State of Gujarat v. P. Raghav,* AIR 1969 SC 1297, has stated the law thus:-

"11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

6. Section 18(2) of the Act prescribes a period of 15 days for filing an appeal and Section 18(4) prescribes a period of 30 days for filing a revision before the Commissioner. When the two sub-Sections prescribe a very short period of 15 and 30 days respectively, it will be unreasonable to hold that the Financial Commissioner has unlimited power to entertain a revision after a lapse of several years.

7. The test prescribed by this Court in *Raghav's* case has been ignored by the Financial Commissioner in the present case. His order does not disclose any reason to hold that a period of nearly seven years is reasonable on the facts of the case. Nor has the High Court gone into the question and decided whether the power has been exercised on the facts and circumstances within a reasonable period. Hence we allow the appeal and set aside the order of the High Court. The order of the Financial Commissioner is also set aside. The order of the Collector dated 18.6.1982 is restored. No costs."

The provisions under the Act are no different and are in pari materia with the provisions of the Haryana Act. Section 15 of the Act provides limitation of appeals as 30 days when it is to be made to the collector, 60 days to the commissioner and 90 days to the financial commissioner. Similarly, in the case of review, the limitation prescribed by Section 16 of the Act is 90 days from the passing of the order. In the present case, no justification or facts have been brought on record of the case by the Collector to justify the revision proceedings by invoking the statutory provision of exercise of powers suo motu by the Financial Commissioner and that too after a lapse of more than 16 to 18 years. The financial commissioner is correct in holding that revisional jurisdiction cannot be exercised, as not only has the delay not been explained, leave alone satisfactorily explained, there is no material on record to justify exercise of such powers after a lapse of more than 14/15 years and to justify the vague unsubstantiated allegations made against the respondent. No ground was made out as to why a detailed report of the Collector based on the true reports of the Naib Tehsildar and the Naib

Tehsildar (Peshi) should be ignored. In the absence of records which was admitted by the petitioner who was the custodian of the records, where was the question of reviewing the order? In State of H.P. and others v. Rajkumar Brijender Singh and others AIR 2004 SC 3218, the Hon'ble Supreme Court observed as under:

> **"(6) We are, now left with the second question which was raised by the respondents before the High Court namely the delayed exercise of the power under sub-section (3) of Section 20. As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that subsection 3 provides that such a power may be exercised at any time but this expression does not mean there would be no time limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fix period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the**

reasonable time within which the power suo motu action could be exercised. For example in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, well it could be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted the order of the Collector which has been interfered with was passed in January 1976 and the appeal preferred by the State was also withdrawn some time in March 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by the reason of which it could be said that exercise of suo motu power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo mo to in a suitable case even though an appeal preferred before

> **lower appellate authority is withdrawn may be by the state. Thus the view taken by the High Court is not sustainable. But the order of the Financial commissioner suffers from vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power in sub-section (3) of Section 20."**

As held by me, no circumstance, fact or justification was placed on record before the Financial Commissioner justifying the invocation of his powers of revising the orders of the Collector. The admitted case of the petitioner is that no record is available and that the correction in the revenue record was carried out after a detailed inquiry made by the Tehsildar and the Naib Tehsildar. There is also nothing on record to show as to why review is being sought after a period of more than 14 years and why the detailed proceedings conducted in accordance with law should be ignored. There is no circumstance brought on record to show that that this delay is reasonable. Added to this is the fact that there is no record available with the petitioner, who is the

custodian of the records. In these circumstances, the reports mentioned in the order of the Collector and which document has come from the custody of the petitioner, cannot be ignored.

No other point has been urged for consideration of this Court.

In the facts and circumstances of the case, I do not find any merit in the submissions made by learned counsel for the State. This writ petition is accordingly dismissed. There shall be no order as to costs.

December 14, 2007 (PC). (Dev Darshan Sud), J.